

**DISTRICT OF COLUMBIA  
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
Petitioner,

v.

FOOTE PLUMBING FLC, L.L.C. and  
LESTER FOOTE  
Respondents

Case Nos.: I-00-11160  
I-00-10623

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**FINAL ORDER**

**I. Introduction**

This case arises under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01–2-1802.05) and Title 21 Chapter 5 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (No. 00-11160) served on March 23, 2001, the Government charged Respondents Foote Plumbing FLC, L.L.C. and Lester Foote with violations of the following regulations: 21 DCMR 506.2 (failure to comply with an approved erosion and sedimentation plan); 21 DCMR 538.1(j) (failure to provide sediment traps to protect inlets or storm sewers below silt producing areas); 21 DCMR 538.1(k) (failure to establish temporary cover by seeding or mulching graded areas); 21 DCMR 539.4 (failure to place adequate erosion control measures before and during exposure; 21 DCMR 539.5 (allowing period of exposure exceeding one hundred twenty (120) days); and 21 DCMR 539.6 (failure to provide temporary or permanent stabilization during or after rough grading). The Notice of Infraction alleged that the violations occurred on March 13, 2001, at a construction site located at 1101 Euclid Street, N.W., and fines in the total amount of \$600 were sought.

Respondents did not file an answer to the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Official Code §§ 2-1802.02(e) and 2-1802.05). Accordingly, on May 4, 2001, this administrative court issued an order finding Respondents in default and subject to statutory penalties in the total amount of \$600 pursuant to D.C. Official Code § 2-1801.04(a)(2)(A), and directing the Government to serve a second Notice of Infraction pursuant to D.C. Official Code § 2-1802.02(f). On May 11, 2001, the Government served the second Notice of Infraction (No. 00-10623).

On May 24, 2001, Respondents filed an untimely plea of Admit with Explanation, pursuant to D.C. Official Code §2-1802.02(a)(2), together with a request for the suspension or reduction of the fines and statutory penalties. Respondents asserted that at the time the violations occurred the grading of the area was in progress and the proper materials were on site. They also asserted that eventually they were in compliance with the law, as of the date of the answer, namely May 22, 2001.

On June 8, 2001, the Government responded objecting to Respondents' request. The Government alleged that on October 11, 2000, Respondents had been served with a Notice of Violation for their failure to comply with the approved erosion and sedimentation plan and had ample time to correct all violations, but instead they delayed the commencement of the corrective work until the Notice of Infraction was served on March 23, 2001. The Notice of Violation served on Respondents on October 11, 2000, and four photographs of the subject site were attached to the Government's response. The Notice of Violation identifies a violation of 21

DCMR 506.2 (failure to comply with approved erosion and sedimentation plan) and directs the following corrective action be taken:

“Provide perimeter control as indicated in approved plan – silt fence.  
Clean debris in the public spaces. Provide stabilized construction  
entrance.”

The photographs depict various views of a vacant, boarded up multifamily building with a temporary security fence on the perimeter of the property. There is sediment on the sidewalks on two sides of the building and mounds of dirt and bare ground around the building without any cover, silt fences, or other measures to prevent erosion or control run-off.

## **II. Findings of Fact**

1. By their plea of Admit with Explanation, Respondents have admitted that on March 13, 2001, at 1101 Euclid Avenue, N.W. they violated the following regulations:
  - a. 21 DCMR 506.2, by failing to comply with an approved erosion and sedimentation plan;
  - b. 21 DCMR 538.1(j), by failing to provide sediment traps to protect inlets or storm sewers below silt producing areas;
  - c. 21 DCMR 538.1(k), by failing to establish temporary cover by seeding or mulching graded areas;

- d. 21 DCMR 539.4, by failing to place adequate erosion control measures before and during exposure;
  - e. 21 DCMR 539.5, by allowing a period of exposure exceeding 120 days; and
  - e. 21 DCMR 539.6, by failing to provide temporary or permanent stabilization during or after rough grading.
- 2. Despite a prior Notice of Violation on October 11, 2000, Respondents did not take action to correct their unlawful conduct until the Notice of Infraction was served on March 23, 2001.
- 3. Respondents have furnished no explanation for their failure to timely respond to the Notice of Infraction.

### **III. Conclusions of Law**

Respondents violated 21 DCMR 506.2, 21 DCMR 538.1(j), 21 DCMR 538.1(k), 21 DCMR 539.4, 21 DCMR 539.5 and 21 DCMR 539.6 on March 13, 2001. The fine for a first violation of each of these regulations is as follows: \$100 for violation of 21 DCMR 506.2, as provided in 16 DCMR 32342(c); \$100 for violation of 21 DCMR 538.1(j), as provided in 16 DCMR 3234.2(v); \$100 for violation of 21 DCMR 538.1(k), as provided in 16 DCMR 3234.2(w); \$100 for violation of 21 DCMR 539.4, as provided in 16 DCMR 3234.2(y); \$100 for

violation of 21 DCMR 539.5, as provided in 16 DCMR 3234.2 (z); and \$100 for violation of 539.6, as provided in 16 DCMR 3234.2(aa).

There is no evidence justifying the suspension or reduction of the proposed fines. In the Notice of Violation of October 11, 2000, Respondents were directed to take corrective action by 11:00 a.m. the next day to comply with the applicable erosion and sedimentation plan for the subject site. Apparently, no corrective work of any significance was undertaken by Respondents during the ensuing five months prior to the service of the first Notice of Infraction on March 23, 2001. Also, there is no evidence that Respondents took corrective action promptly after service of the first Notice of Infraction, nor is there evidence showing when the work was completed. Respondents' statement that the work was in progress when the inspector came to the job site and that as of May 22, 2001, two months later, they were "in compliance" certainly does not demonstrate that Respondents acted promptly to correct the violations. Accordingly, there is no ground for the suspension or reduction of the proposed fines in the total amount of \$600.

As for the statutory penalties, the Civil Infractions Act requires the recipient of a Notice of Infraction to demonstrate "good cause" for failing to answer it within the time allowed by the statute. If there is a failure to answer and "good cause" is not shown, the statute requires that a penalty equal to the amount of the proposed fine for each violation be assessed. D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f).

Respondents have failed to present any evidence to explain the reason for their untimely answer to the first Notice of Infraction and, therefore, have failed to show good cause for their untimely answer. Accordingly, this administrative court must impose the statutory penalties in the total amount of \$600.

#### **IV. Order**

Based upon the foregoing findings of fact and conclusions of law, it is this \_\_\_\_\_, day of \_\_\_\_\_ 2002:

**ORDERED**, that Respondents Foote Plumbing FLC, L.L.C. and Lester Foote, jointly and severally, shall pay a total of **ONE THOUSAND TWO HUNDRED DOLLARS (\$1,200)** in accordance with the attached instructions, within twenty (20) calendar days of the date of mailing of this order (fifteen (15) calendar days plus five (5) days for service by mail, pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

**ORDERED**, that if Respondents fail to pay the above amount within twenty (20) calendar days of the date of mailing of this order, by law, interest will accrue on the unpaid amount at the rate of 1 ½% per month, or portion thereof, beginning with the date of this order. D.C. Official Code § 2-1803(i)(1); and it is further

**ORDERED**, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits, pursuant to D.C. Official Code § 2-1802.03 (f), the placement of a lien on real or personal owned by Respondents, pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondents' business premises or work sites, pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/      **05/06/02**

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Robert E. Sharkey  
Administrative Judge